

**SSC Pacific Research Grant and Agreement General Terms and Conditions  
for Educational Institutions and Nonprofit Organizations (August 2013)**

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## **I. GENERAL**

1. **Purpose.** These Space and Naval Warfare Systems Center Pacific (SSC Pacific) General Terms and Conditions incorporate the requirements of the Department of Defense Grant and Agreement Regulations (DoDGARS) and the U.S. Office of Management and Budget Circulars as they apply to grants and agreements made by DoD components to educational and nonprofit organizations.

2. **Definitions.** Terms used in these General Terms and Conditions have meanings given in section 32.2 of the DoDGARS, with the following additions and clarifications:

(a) System for Award Management (SAM) means the Federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the SAM Internet site (currently at <https://www.sam.gov>).

(b) Data Universal Numbering System (DUNS) number means the nine-digit number established and assigned by Dun and Bradstreet, Inc. (D&B) to uniquely identify business entities. A DUNS number may be obtained from D&B by telephone (currently 866-705-5711) or the Internet (currently at <http://fedgov.dnb.com/webform>).

(c) Entity, as it is used in this award term, means all of the following, as defined at 2 CFR part 25, subpart C:

(1) A Governmental organization, which is a State, local government, or Indian tribe;

(2) A foreign public entity;

(3) A domestic or foreign nonprofit organization;

(4) A domestic or foreign for-profit organization; and

(5) A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

(d) If the recipient establishes a lower limit than \$5,000 for “equipment,” as permitted by the definition in section 32.2, then items with acquisition costs less than \$5,000 are included as equipment for the recipient’s purposes only. The Federal requirements for equipment, as specified in Article 33 or 34 of the award, apply only to items with acquisition costs of \$5,000 or more per unit.

(e) “DoD Component” as defined in section 32.2 means the DoD Component that made the award.

(f) “Funding period” has the same meaning given in section 32.2, with the additional clarification that the term includes any extension of the expiration date of the award, such as a no-cost extension authorized by paragraph (d)(3) of Article 25.

(g) “Program income” as defined in section 32.2, does not include the receipt of principal on loans, rebates, credits, discounts, etc., or interest earned on any of them.

(h) The term “property” includes supplies in addition to other types of property identified in the definition in section 32.2.

(i) In lieu of the definition given in section 32.2, the term “recipient” means the organization that received the award.

(j) Subrecipient: This term means an entity that receives a subaward under this award and is accountable to the recipient for the use of the Federal funds provided by the subaward.

### **3. Reserved**

**4. Deviations.** Any request by the recipient for waiver or deviation from any provision of either these General Terms and Conditions or any special condition attached to this award shall be submitted to the Grants Officer identified on the signature page of the Grant.

**5. Subawards.** Unless special terms and conditions to this award specifically exclude subrecipients from coverage, the provisions of Part 32 of the DoDGARs shall be applied to subrecipients performing work under the award if such subrecipients are institutions of higher education, hospitals and other nonprofit organizations. State and local government subrecipients are subject to the provisions of 32 CFR Part 33. Subrecipients that are for-profit organizations are subject to 32 CFR Part 34.

## **II. PRE-AWARD REQUIREMENTS**

**10. Purpose.** The requirements in Sections 32.10 through 32.17 of the DoDGARs are incorporated into these General Terms and Conditions.

**11. National Policy Requirements.** By signing the agreement or accepting funds under the agreement, the recipient assures that it will comply with the provisions for national policy requirements found in Appendix B to the DoDGARS. Should an applicable national requirement be missing from the matrix, recipients and subrecipients are nevertheless responsible for compliance with applicable national policy requirements.

**12. Requirement for System for Award Management (SAM) Registration.** Unless you are exempted from this requirement under 2 CFR 25.110, you as the recipient must maintain the currency of your information in SAM until you submit the final financial report required under this award or receive the final payment, whichever is later. This

requires that you review and update the information at least annually after the initial registration, and more frequently if required by changes in your information or another award term.

**13. Requirement for Data Universal Numbering System (DUNS) numbers.** If you are authorized to make subawards under this award, you:

(a) Must notify potential subrecipients that no entity (see Definitions) may receive a subaward from you unless the entity has provided its DUNS number to you.

(b) May not make a subaward to an entity unless the entity has provided its DUNS number to you.

14. Reserved.

15. Reserved.

16. Reserved.

17. Reserved.

### **III. POST-AWARD REQUIREMENTS**

Post-award requirements in these General Terms and Conditions implement the provisions in Subpart C of Section 32 of the DoDGARs. The numbering of the articles in these General Terms and Conditions therefore parallels the numbering of the DoDGAR's provisions (e.g., Article 21 in this document implements section 32.21 of the DoDGARs).

#### **III.A. FINANCIAL AND PROGRAM MANAGEMENT**

**20. Purpose of financial and program management.** Articles 21 through 29 reflect DoD Component implementation of Sections 32.21 through 32.29 of the DoDGARs.

**21. Standards for financial management systems.** The recipient's financial management system shall meet the standards specified in paragraph (b) of section 32.21 of the DoDGARs.

**22. Payment.** Section 32.22 of the DoDGARs governs the DoD Component and recipient's responsibilities concerning payments, with the following clarifications:

(a) Payments will be made in advance, subject to the conditions described in paragraph (b) of section 32.22, unless the DoD Component provides otherwise in the award document.

(b) With respect to paragraph (l) of section 32.22, the complete address for remitting checks for interest earned on Federal advances is Department of Health and Human Services, Payment Management System, P.O. Box 6021, Rockville, MD 20852.

(1) In keeping with Electronic Funds Transfer rules (31 CFR part 206), interest should be remitted to the HHS Payment Management System

through an electronic medium such as the FEDWIR Deposit System. Electronic remittances should be in the format and should include any data that are specified by the HHS as being necessary to facilitate direct deposit in HHS' account at the Department of the Treasury.

(2) Recipients that do not have electronic remittance capability should send a check to the address in (b) above.

**23. Cost sharing or matching.** Section 32.23 of the DoDGARs governs the allowability and valuation of third party in-kind and recipient contributions toward cost sharing or matching, with the following clarifications:

(a) Should section 32.23 be amended to specify documentation requirements for different types of cost sharing (e.g., mandatory, voluntary, or excess voluntary), these documentation requirements are hereby incorporated into these General Terms and Conditions.

(b) The recipient may include unrecovered indirect costs as part of cost sharing or matching.

(c) Certain other costs or valuation methods require approval of the DoD Component, in accordance with paragraphs (c) and (g)(2) of section 32.23.

(d) Full value of equipment or other capital assets and fair rental charges for land may be allowed, instead of only depreciation or use charges, provided that the DoD Component has approved the charges.

**24. Program income.** The use and disposition of program income is governed by section 32.24 of the DoDGARs.

(a) The additive method of paragraph 32.24(b)(1) will be used to dispose of program income, in accordance with paragraph 32.24(d).

(b) The recipient will have no obligation to the Federal Government for program income earned after the end of the project period, in accordance with paragraph 32.24(e).

(c) The recipient will have no obligation to the Federal Government for program income earned from license fees and royalties for copyrighted material, in accordance with paragraph 32.24(h).

**25. Revision of budget and program plans.**

(a) The budget plan is the financial expression of the project or program as approved during the award process. The approved budget includes the Federal share of project costs and that portion of the non-Federal share of project costs, if any, that the

recipient and the DoD Component formally agree upon as cost sharing (see paragraph (a) of Article 23).

(b) The recipient must obtain the prior written approval of the DoD Component before making any of the following project changes:

(1) A change in scope or objectives of the project as stated in the approved application or approved modifications thereto, such as a change in phenomenon (a) under study, even if there is no associated budget revision.

(2) The absence or change of the Principal Investigator/Project Director (PI/PD). If the approved PI/PD severs his or her connection with the recipient or otherwise relinquishes active direction of the project (either permanently or for a continuous period of more than 3 months or a 25 percent reduction in time devoted to the project), then the recipient must either:

(i) Appoint a replacement PI/PD with the approval of the Grants Officer.

(ii) Seek and receive prior approval from the Grants Officer for the reduction of time devoted to the project; or

(iii) Relinquish the award (in which case the award will be terminated by mutual agreement, in accordance with Article 61).

(3) The need for additional Federal funding. The maximum obligation of the DoD Component to the recipient is the amount indicated in the award as obligated by that DoD Component. Nothing in this Article or in the other requirements of the award requires the DoD Component to make any additional award of funds or limits its discretion with respect to the amount of funding to be provided for the same or any other purpose.

(4) The transfer, by contract or other means, of a significant part of the research or substantive programmatic effort, unless described in the approved application or approved modifications to the award. The recipient must submit a justification, a description of the scientific/technical impact on the project, and a budget estimate to the Grants Officer.

(c) All prior approvals required in OMB Circulars A-21 and A-122, except those waived in subparagraphs (c)(1) through (c)(6) of this Article, and in Article 27, must be obtained. The recipient is authorized to do any one or more of the following:

(1) Incur pre-award costs 90 calendar days prior to award (or more than 90 calendar days with the prior approval of the DoD Component). Pre-award expenditures prior to funding of an increment within a multiple-year project, including any optional years, are not subject to this limitation or approval requirement. All costs are incurred at the recipient's risk (i.e., the DoD Component is under no obligation to reimburse such costs if for any reason the recipient does not receive an award or if the award is less than anticipated and inadequate to cover such costs).

(2) Initiate a one-time, no-cost extension of the expiration date of the award of up to 12 months unless the no-cost extension involves a change in the approved objectives or scope of the project.

(3) For one-time extensions, the recipient must notify the Grants Officer in writing with the supporting reasons and revised expiration date at least 10 days before the expiration date specified in the award. This one-time extension may not be exercised merely for the purpose of using unobligated balances.

(4) Carry forward unobligated balances to subsequent funding periods. Any unobligated balance of funds which remains at the end of any funding period, except the final funding period of the project, shall be carried over to the next funding period, and may be used to defray costs of any funding period of the project in addition to the current year's funding. Since the carryover of unobligated balances is automatic, no separate or specific awarding agency prior approval shall be required to authorize use of the funds.

(5) The inclusion of costs that require the DoD Component's prior approval under the applicable cost principles. Applicable cost principles depend upon the type of organization, as described in section 32.27 of the DoDGARs. Note that the DoD Component gives its approval for the inclusion of certain costs for which the Component's prior approval is required by the applicable cost principles, as detailed in Article 27.

(6) The transfer of amounts budgeted for indirect costs to absorb increases in direct costs, or vice versa, if approval is required by the DoD Component.

(7) The transfer of funds allotted for training allowances (direct payment to trainees) to other categories of expense.

(d) The recipient must provide revised budget information to the Grants Officer if there are any significant changes in the size or scope of the project or in the originally negotiated total estimated cost for the project period.

(1) To request approval for budget revisions, the recipient shall use the budget forms that were used in the application or submit a letter of request.

(2) Within 30 calendar days from the date of receipt of the request for budget revisions, the DoD Component shall review the request and notify the recipient whether the budget revisions have been approved. If the revision is still under consideration at the end of 30 calendar days, the DoD Component shall inform the recipient in writing of the date when the recipient may expect the decision.

**26. Non-Federal audits.** The recipient will obtain audits and require subrecipients to obtain audits in accordance with section 32.26 of the DoDGARs.

**27. Allowable Costs.** This includes costs of the award and costs of subrecipients under subawards to the award. Allowable costs of the recipient and subrecipients are in accordance with the cost principles described in section 32.27 of the DoDGARs, with the following clarifications:

(a) Educational Institutions covered by OMB Circular A-21.

(1) Prior approvals. The DoD Component hereby approves the inclusion of certain costs for which the DoD Component's prior approval is required by the cost principles for educational institutions, in OMB Circular A-21. DoD Component approval is granted for the recipient to:

(i) Include charges for faculty consulting on sponsored agreements that exceed a faculty member's base salary, but only in unusual cases where: (a) consultation is across departmental lines or involves a separate or remote operation; and (b) the consulting work is in addition to the faculty member's regular departmental load [reference paragraph J.10 (d)(1) of OMB Circular A-21].

(ii) Include as direct charges capital expenditures for general purpose equipment or special purpose equipment, but only if the equipment is primarily used in the actual conduct of research, as stated in paragraph 34(c) of Article 34 of these General Terms and Conditions [reference paragraph J.18 (b)(1) and (2) of OMB Circular A-21].

(iii) Include as direct charges capital expenditures for improvements to equipment that materially increases the equipment's value or useful life, but only if the equipment is primarily used in the actual conduct of the research [reference paragraph J.18 (b)(3) of OMB Circular A-21].

(iv) Include preagreement costs, to the extent described in paragraph (c)(1) of Article 25 of these General Terms and Conditions [reference paragraph J.36 of OMB Circular A-21].

(v) Include rearrangements and alterations under \$25,000 [reference paragraph J.40 of OMB Circular A-21], subject to the following conditions:

(A) The alteration or renovation must be essential to the project supported;

(B) The facility to be altered or renovated must have a useful life consistent with research purposes and be architecturally and structurally suitable for conversion to the type of space required;

(C) The space involved must actually be occupied by the project or program;

(D) The space must be suitable for human occupancy before alteration or renovation work is started, except where the purpose of the alteration or renovation is to make the space suitable for some purpose other than human occupancy (e.g., storage);

(E) If the space is rented, evidence must be provided that the terms of the lease are compatible with the alteration and renovation proposed.

(2) The following clarification applies to the standard in paragraph (c)(4)(d) of OMB Circular A-21, which relates to allocation of costs for interrelated projects supported by multiple Federal awards: The interrelationship between or among projects does not have to be formally stipulated, but must be demonstrable on the basis of the following criteria. Either: (a) the theoretical approaches are interrelated; (b) studies of the same phenomena are conducted by the same or different techniques; or (c) studies of different phenomena are conducted by the same technique.

(b) Nonprofit organizations covered by OMB Circular A-122. The DoD Component hereby approves the inclusion of certain costs for which the Component's prior approval is required by the cost principles for nonprofit organizations, in OMB Circular A-122. DoD Component approval is granted for the recipient to:

(1) Include as direct charges capital expenditures for general purpose equipment or special purpose equipment, but only if the equipment is primarily used in the actual conduct of research, as stated in paragraph (c)

of Article 34 of these General Terms and Conditions [reference subparagraphs 15(b)(1) and (2) of Attachment B to OMB Circular A-122].

(2) Include as direct charges capital expenditures for improvements to equipment that materially increases the equipment's value or useful life, but only if the equipment is primarily used in the actual conduct of the research [reference paragraph 15(b)(3) of Attachment B to OMB Circular A-122].

(3) Include participant support costs such as stipends, subsistence allowances, travel allowances, and registration fees paid to or on behalf of participants or trainees (but not employees) in connection with meetings, conferences, symposia, or training projects [reference paragraph 33 of Attachment B to OMB Circular A-122].

(4) Include pre-award costs incurred up to 90 days prior to the effective date of award, as provided in subparagraph (c)(1) of Article 25 of these General Terms and Conditions [reference paragraph 36 of Attachment B to OMB Circular A-122].

(5) Include costs of rearrangements and alterations under \$25,000 [reference paragraph 39 of Attachment B to OMB Circular A-122], subject to the following conditions:

(i) The alteration or renovation must be essential to the project supported;

(ii) The facility to be altered or renovated must have a useful life consistent with research purposes and be architecturally and structurally suitable for conversion to the type of space required;

(iii) The space involved must actually be occupied by the project or program;

(iv) The space must be suitable for human occupancy before alteration or renovation work is started, except where the purpose of the alteration or renovation is to make the space suitable for some purpose other than human occupancy (e.g., storage);

(v) If the space is rented, evidence must be provided that the terms of the lease are compatible with the alteration and renovation proposed.

(6) Include costs for foreign travel outside of Canada and the United States and its territories and possessions [reference paragraph 51(e) of Attachment B to OMB Circular A-122].

(c) Hospitals covered by 45 CFR 74, Appendix E. The DoD Component hereby approves the inclusion of certain costs for which the Component's prior approval is required by the cost principles for hospitals, in 45 CFR 74, Appendix E. DoD Component approval is granted for the recipient to:

(1) Include as direct charges capital expenditures for general purpose equipment or special purpose equipment, but only if the equipment is primarily used in the actual conduct of research as stated in paragraph (c) of Article 34 of these General Terms and Conditions [reference paragraphs IX.B.4 & 12 of 45 CFR 74, Appendix E].

(2) Include charges for nonhospital professional activities that exceed a staff member's base salary, but only in unusual cases where (a) the nonhospital professional activities are across departmental lines or involve a separate or remote operation; and (b) the nonhospital professional work is in addition to the staff member's regular departmental load [reference paragraph IX.B.7.f of 45 CFR 74, Appendix E].

(3) Include preagreement costs to the extent described in paragraph (c)(1) of Article 25 of these General Terms and Conditions [reference paragraph IX.B.27 of 45 CFR 74, Appendix E].

(4) Rearrangement, alteration and reconversion costs under \$25,000 [reference paragraphs IX.B.32 & 33 of 45 CFR 74, Appendix E], subject to the following conditions:

(i) The rearrangement or alteration must be essential to the project supported;

(ii) The facility to be altered or rearranged must have a useful life consistent with research purposes and be architecturally and structurally suitable for conversion to the type of space required;

(iii) The space involved must actually be occupied by the project or program;

(iv) The space must be suitable for human occupancy before alteration or rearrangement work is started, except where the purpose of the alteration or renovation is to make the space suitable for some purpose other than human occupancy (e.g., storage);

(v) If the space is rented, evidence must be provided that the terms of the lease are compatible with the alteration and rearrangement proposed.

**28. Period of availability of funds.** The recipient may charge to the award only allowable costs resulting from obligations incurred during the funding period specified, any pre-award costs authorized in accordance with paragraph (c) of Article 25 of these General Terms and Conditions, and costs incidental to the production of the final report.

**29. Reserved**

### **III.B. PROPERTY STANDARDS**

**30. Purpose of property standards.** Sections 32.31 through 32.37 of the DoDGARs set forth uniform standards governing management and disposition of property furnished by the Federal Government whose cost was charged to a project supported by a Federal award.

**31. Insurance coverage.** Requirements for insuring real property or equipment under the award are as stated in section 32.31 of the DoDGARs.

**32. Real property.** The recipient may not acquire real property under the award without the prior approval of the Grants Officer, in accordance with paragraph J.16(b)(1) of OMB Circular A-21, paragraph 15(c) of Attachment B to OMB Circular A-122, and 45 CFR 74, Appendix E. Should approval be granted to do so, the DoD Component will prescribe requirements for use and disposition of the property, in accordance with section 32.32 of the DoDGARs.

**33. Federally-owned and exempt property.**

(a) Federally-owned property includes: equipment or supplies that are furnished by the Federal Government; or equipment acquired by the recipient under a Federal award that specifies that title to the property vests upon acquisition in the Federal Government. The recipient:

(1) Must submit annual and final reports for any Federally-owned property under the award, in accordance with paragraph (a)(1) of section 32.33 of the DoDGARs.

(2) May use Federally-owned equipment on other activities not sponsored by the Federal Government only if authorized by the Grants Officer. User charges must be treated as program income, in accordance with paragraph (d) of section 32.34 of the DoDGARs.

(3) Must administer Federally-owned equipment in accordance with paragraph (f) of section 32.34.

(b) Exempt property. All equipment and supplies acquired by the recipient under the award are “exempt property” as that term is defined in the DoDGARs. Articles 34

and 35 of these General Terms and Conditions address the requirements for equipment and supplies, respectively.

#### **34. Equipment.**

(a) Title to all equipment purchased or fabricated with DoD Component or recipient cost sharing funds, as direct costs of the project or program, shall vest in the recipient upon acquisition without further obligation to the Federal Government, subject to the following conditions:

(1) The DoD Component may require that title be transferred to the Federal Government or a third party if the project or program for which the equipment was purchased is transferred to another recipient. In any such case, the DoD Component will notify the recipient of the intent to transfer title within 120 days following the expiration or termination of the project and paragraph (g)(2) of section 32.34 of the DoDGARs then applies.

(2) As long as the Federal Government continues to support the project or program for which the equipment was purchased, the recipient:

(i) Must use the equipment in that project or program, unless it no longer is needed for that project or program. The recipient may not encumber the equipment without the approval of the Grants Officer.

(ii) Must use the equipment in accordance with paragraphs (b) and (d) of section 32.34 of the DoDGARs. In accordance with paragraph (b), the recipient shall not use equipment acquired with Federal funds to provide services to non-Federal outside organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute.

(iii) May, when acquiring replacement equipment, use the equipment that is being replaced as trade-in or sell the equipment and use the proceeds to offset the costs of the replacement equipment, as authorized by paragraph (e) of section 32.34 of the DoDGARs.

(3) The recipient must account for the equipment in accordance with paragraph (f) of section 32.34. The recipient must continue to account for the equipment after the cessation of Federal support for the project or program for which the equipment was purchased, in a manner that ensures that: (a) equipment purchased under the award is not later included as a contribution toward cost sharing under another Federal award; and (b)

depreciation or use charges for the equipment are not later included in any proposal for Facilities and Administration costs.

(b) The recipient shall specify in any cost-type subaward whether title to equipment purchased or fabricated under the subaward vests in the recipient or subrecipient. If title vests in the subrecipient, it must be subject to the conditions specified in paragraph (a) of this article (modified appropriately if the subrecipient is not an institution of higher education or nonprofit organization and its property management standards are specified in a document other than Part 32 of the DoDGARs). The recipient shall also require each subrecipient to specify, in any lower-tier, cost-type subaward that the recipient awards, whether title to equipment purchased or fabricated under that lower-tier subaward vests in the subrecipient making the subaward or in the lower-tier subrecipient.

(c) Expenditures for acquisition or improvement of general purpose and special purpose equipment, as defined in paragraphs J.16(a)(3) and (4) of OMB Circular A-21, paragraph 15(a) of Attachment B to OMB Circular A-122, and 45 CFR 74, Appendix E, are allowable in accordance with Article 27, section (a)(1)(iii).

**35. Supplies.** Section 32.35 of the DoDGARs governs the vesting of title and requirements for use and disposition of supplies, with the following clarification:

(a) Title to supplies shall vest in the recipient upon acquisition unconditionally, without further obligation to the Federal Government.

**36. Intangible property.** Section 32.36 of the DoDGARs specifies the Government's and recipient's rights and responsibilities concerning copyrights, patents and inventions, and data that are generated or acquired under the award. See Appendix A for SSCSD implementation of this section.

**37. Property trust relationship.** Section 32.37 of the DoDGARs applies to real property, equipment and intangible property acquired or improved with Federal funds under the award. This article imposes no additional requirements for notices of record over and above any described in Articles 32 through 36 of these General Terms and Conditions.

### **III.C. PROCUREMENT STANDARDS**

**40. Procurement.** The recipient shall maintain a procurement system that, at a minimum meets the requirements of sections 32.41 through 32.48 of the DoDGARs, with the following clarifications:

(a) The reference in paragraph (e) of section 32.48 to "Appendix A to this part" is replaced by a reference to Appendix B of these General Terms and Conditions.

(b) The recipient shall give preference in its procurements using Federal funds to the purchase of recycled products pursuant to EPA guidelines in 40 CFR 247-254 if it is a State or local institution of higher education, hospital, or nonprofit organization to which the Resource Conservation and Recovery Act (RCRA) applies, in accordance with section 32.16 of the DoDGARs.

(c) The recipient's procurement system, in its essential elements, shall remain as approved by the Office of Naval Research (ONR) and the ONR shall be notified of any major change(s) to the approved system, if the ONR has reviewed and approved the recipient's procurement system for any of the following reasons:

(1) The ONR is the cognizant Federal agency for the recipient or has reviewed the recipient's procurement system at the request of another DoD Component.

(2) The recipient also receives Federal procurement contracts; the administrative contracting officer has determined that there is a need for a contractor's purchasing system review, in accordance with 48 CFR 44.302 in the Federal Acquisition Regulation; and the ONR is the office responsible for conducting the review.

### **III.D. REPORTS AND RECORDS**

**50. Purpose of reports and records.** Sections 32.51 through 32.52 of the DoDGARs set forth the procedures for monitoring and reporting on the recipient's financial and program performance. In lieu of the forms designated in 32.52(a)(1) and (a)(2), the standard form designated for use is the Federal Financial Report (FFR) (SF 425) as mandated by OMB.

**51. Monitoring and reporting program performance.** The recipient's responsibilities for programmatic monitoring and reporting are as stated in paragraphs (a) through (g) of section 32.51 of the DoDGARs, with the following additions and clarifications:

(a) **Publications.** The recipient is expected to publish or otherwise make publicly available the results of the work conducted under the award. An acknowledgment of DoD Component support and a disclaimer must appear in the publication of any material, whether copyrighted or not, based on or developed under this project, as follows:

(1) The acknowledgment will be: "This material is based upon work supported by the [name of DoD Component(s)] under Award No. [recipient should enter the DoD Component(s) award number(s)]."

(2) The disclaimer will be: "Any opinions, findings, and conclusions or recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the views of the [name(s) of DoD Component(s)]."

(b) Technical Reports.

(1) The final technical report, in accordance with paragraphs (b) through (d) of section 32.51, is due 90 calendar days after the expiration or termination of the award, unless the award-specific terms and conditions state that a final report is not required.

(2) See Attachment 1 to the award for instructions for the electronic submission of technical reports.

(c) Site Visits. With respect to paragraph (g) of section 32.51, the DoD Component's authorized representatives have the right to make site visits at all reasonable times to review project accomplishments and provide such technical assistance as may be required. All site visits and evaluations shall be performed in a manner that does not unduly interfere with or delay the work.

**52. Financial reporting.** Financial status reporting as required by 32.52 of the DoDGARs shall be provided on a quarterly basis utilizing the Federal Financial Report (FFR) (SF 425). Interim reports shall be submitted no later than 30 days after the end of each reporting period. The following reporting period end dates shall be used for interim reports: 3/31, 6/30, 9/30, or 12/31. A final financial status report is also required no later than 90 days after completion of the Grant. This report can be on a cash or accrual basis depending on how the Grantee's accounting records are normally kept. If payments are made in advance, in accordance with Article 22(a) of these General Terms and Conditions, the Federal Financial Report (FFR) (SF 425) or its electronic equivalent shall be submitted within the same time frames as discussed above.

**53. Retention and access requirements for records.** The rights and responsibilities of the recipient and the DoD Component are as stated in section 32.53 of the DoDGARs, with the following clarifications:

(a) With the exception of the types of records described in paragraphs (b)(1) through (b)(4) of section 32.53, the recipient must retain financial and programmatic records, supporting documents, statistical records, and all other records of a recipient that are required by these General Terms and Conditions, or may reasonably be considered pertinent to the award, for a period of 3 years from the date the Federal Financial Report is submitted.

(b) In accordance with paragraph (c) of section 32.53, copies of original records, either in paper or in computer or electronic format, may be substituted for the original records.

**54. Reporting Potentially Classifiable Information.**

(a) This award is intended for unclassified, publicly releasable research. The recipient will not be granted access to classified information. The awarding agency does not expect that the results of the research project will involve classified information. Under certain circumstances, however, a classification review of information originated under the award may be required. The awarding agency may review research work generated under this award at any time to determine if it requires classification.

(b) Executive Order 12958 (60 Fed. Reg. 19,825 (1995)), as amended by Executive Order 13292 (68 Fed. Reg. 15315 (2003)) states that basic scientific research information not clearly related to the national security shall not be classified. Nevertheless, some information concerning (among other things) scientific, technological, or economic matters relating to national security, which includes defense against transnational terrorism, or cryptology may require classification. If a recipient originates information during the course of this award that it believes requires classification under this Executive order, the recipient must promptly:

- (1) Notify the awarding agency's program official or the person identified in the Agency Specific Requirements.
- (2) Submit the information for classification review as directed by the program official or by registered mail directly to the address specified in the Agency Specific Requirements.
- (3) Restrict access to the information to the maximum extent possible until the recipient is informed that the information is not classified, but no longer than thirty (30) days after receipt by the Federal agency performing the classification review.

(c) If the agency performing the classification review determines any of the information requires classification, the recipient agrees that the awarding agency may terminate the award by mutual agreement in accordance with the termination provisions of the award, or otherwise amend it. All material deemed to be classified must be handled in accordance with agency instructions.

(d) If the agency performing the classification review does not respond within the specified time periods, the recipient is under no further obligation to restrict access to the information.

## 55. Reporting Subawards and Executive Compensation

### (a) Reporting by Recipient of First-tier Subawards

- (1) Applicability. Unless you are exempt as provided in paragraph d. of this award term, you must report each action that obligates \$25,000 or more in Federal funds that does not include Recovery funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of

2009, Pub. L. 111-5) for a subaward to an entity (see definitions in paragraph e. of this award term).

(2) Where and when to report.

(i) You must report each obligating action described in paragraph a.1. of this award term to [www.fsrs.gov](http://www.fsrs.gov).

(ii) For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)

(3) What to report. You must report the information about each obligating action that the submission instructions posted at [www.fsrs.gov](http://www.fsrs.gov) specify.

(b) Reporting Total Compensation of Recipient Executives.

(1) Applicability and what to report. You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if –

(i) the total Federal funding authorized to date under this award is \$25,000 or more;

(ii) in the preceding fiscal year, you received—

(A) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

(B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

(iii) The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>).

(2) Where and when to report. You must report executive total compensation described in paragraph b.1. of this award term:

(i) As part of your registration profile at [www.sam.gov](http://www.sam.gov).

(ii) By the end of the month following the month in which this award is made, and annually thereafter.

(c) Reporting of Total Compensation of Subrecipient Executives.

(1) Applicability and what to report.

Unless you are exempt as provided in paragraph d. of this award term, for each first-tier subrecipient under this award, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if –

(i) in the subrecipient's preceding fiscal year, the subrecipient received—

(A) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

(B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and

(ii) The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at (<http://www.sec.gov/answers/execomp.htm>)).

(2) Where and when to report. You must report subrecipient executive total compensation described in paragraph c.1. of this award term:

(i) To the recipient.

(ii) By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated

on any date during the month of October of a given year (i.e., between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

(d) Exemptions: If, in the previous tax year, you had gross income, from all sources, under \$300,000, you are exempt from the requirements to report:

- (1) subawards, and
- (2) the total compensation of the five most highly compensated executives of any subrecipient.

(e) Definitions. For purposes of this award term:

- (1) Entity means all of the following, as defined in 2 CFR part 25:
  - (i) A Governmental organization, which is a State, local government, or Indian tribe;
  - (ii) A foreign public entity;
  - (iii) A domestic or foreign nonprofit organization;
  - (iv) A domestic or foreign for-profit organization;
  - (v) A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.
- (2) Executive means officers, managing partners, or any other employees in management positions.
- (3) Subaward:
  - (i) This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.
  - (ii) The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. --.210 of the attachment to OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations").

(iii) A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.

(4) Subrecipient means an entity that:

(i) Receives a subaward from you (the recipient) under this award; and

(ii) Is accountable to you for the use of the Federal funds provided by the subaward.

(5) Total compensation means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):

(i) Salary and bonus.

(i) Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.

(iii) *Earnings for services under nonequity incentive plans.* This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.

(iv) *Change in pension value.* This is the change in present value of defined benefit and actuarial pension plans.

(v) Above-market earnings on deferred compensation which is not tax-qualified.

(vi) Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

### **III.E. TERMINATION AND ENFORCEMENT**

#### **61. Termination.**

(a) Paragraph (a) of section 32.61 of the DoDGARs states the conditions under which the recipient and/or the DoD Component may terminate the award before the date of completion specified in the award document and any amendments thereto.

(b) The recipient and any DoD Component are responsible for the closeout of the terminated award, as described in Article 71 of these General Terms and Conditions.

(c) After the termination, the recipient and the DoD Component continue to have the rights and responsibilities described in Article 72 of these General Terms and Conditions.

**62. Enforcement.** Section 32.62 of the DoDGARs specifies the remedies available to the DoD Component when the recipient materially fails to comply with the terms and conditions of the award. Section 32.62 also states the rights and responsibilities of the recipient and the DoD Component related to any enforcement action.

#### **IV. AFTER-THE-AWARD REQUIREMENTS**

**71. Closeout procedures.** The rights and responsibilities of the recipient and the DoD Component are as stated in section 32.71 of the DoDGARs, with the following clarifications:

(a) The DoD Component shall make downward adjustments to the Federal share of costs, as described in paragraph (e) section 32.71, if the amount expended by the recipient on project costs is less than the amount stated in the award and any amendments thereto.

**72. Subsequent adjustments and continuing responsibilities.**

(a) The continuing rights of the DoD Component and responsibilities of the recipient after closeout of the award are as stated in paragraph (a) of section 32.72 of the DoDGARs.

(b) After closeout of the award, the recipient and the DoD Component may modify or end those continuing rights and responsibilities by mutual agreement, as described in paragraph (b) of section 32.72, provided that the responsibilities of the recipient referred to in paragraph (a) of section 32.72 are considered and provisions made for continuing responsibilities of the recipient, as appropriate.

**73. Collection of amounts due.** The DoD Component's rights and responsibilities for debt collection are as stated in section 32.73 of the DoDGARs.

## **Appendix A**

### **INTELLECTUAL PROPERTY RIGHTS**

Each Recipient, as defined in Part 32 of the DoD Grant and Agreement Regulations, DoD 3210.6-R, [including public and private institutions of higher education, public and private hospitals and other quasi-public and private non-profit organizations] (hereafter referred to as “Part 32 Recipients”), and each Recipient, as defined in Part 34 of the DoD Grant and Agreement Regulations, DoD 3210.6-R, [including for-profit entities] (hereafter referred to as “Part 34 Recipients”), shall be subject to the following intellectual property provisions.

#### **I. PATENTS AND INVENTIONS**

(A) All Part 32 Recipients and Part 34 Recipients that are small business concerns shall comply with applicable regulations governing patents and inventions, including Government wide regulations issued by the Department of Commerce at 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements." Grants and cooperative agreements shall include the patent rights provision of 37 CFR 401.14 as modified below.

(B) All Part 34 Recipients other than small business concerns shall comply with applicable regulations governing patents and inventions and shall include the patent rights provision of 37 CFR 401.14 as modified below.

(C) The patent rights clause found at 37 CFR 401.14 is modified as follows: replace the word "contractor" with "Recipient;" replace the word "contract" with "award"; paragraph (b) is modified to include at the end thereof the additional language provided after the colon in 37 CFR 401.5(e), paragraph (f) is modified to include the additional requirements stated in 37 CFR 401.5 (f)(1), (2) and (3); delete paragraphs (g)(2), (g)(3) and the words "to be performed by a small business firm or domestic nonprofit organization" from paragraph (g)(1); insert under paragraph (1) entitled “Communications” the following:

- (1) “The point of contact on matters relating to this clause will be:  
Commanding Officer  
Office of the Patent Counsel  
SPAWARSYSCEN PACIFIC CODE 360012  
53510 Silvergate Avenue Rm 103  
San Diego, California 92152-5765

(2) Recipient shall file Invention (Patent) Reports as of the close of the performance year and at the end of the term for this Agreement. Annual reports are due 60 days after the end of each year of performance and final reports are due 60 days after the expiration of the final performance period. Recipient shall use DD Form 882,

“Report of Inventions and Subcontracts”, to file an invention report as well as to report the lack of any invention. Recipient shall submit the original and one copy to the SPAWARSCEN PACIFIC Office of Patent Counsel, one copy to the Grants Administration Office, and one copy to the Grants Officer, if different than the Grants Administration Office.”

Final payment cannot be made nor can the agreement be closed out until Recipient delivers to the U.S. Government all reports and disclosures of subject inventions required by this agreement, all confirmatory instruments relating thereto, and an acceptable final report pursuant to the article entitled "Annual and Final Technical Reports".

(D) The following provision applies to all Recipients.

“AGREEMENT TO LICENSE/ NO IMPLIED LICENSE”

(1) Except as provided in b. below:

(a) Recipient shall obtain a license from the U.S. Government under the following U.S. patents, patent applications and all patents issuing thereon, and under all patents that may issue and patent applications that may be filed on the following invention disclosures, on reasonable terms and conditions, consistent with law, regulation, and Navy policy prior to any manufacture, use, sale, lease, license, or conveyance of any kind of any process, machine, manufacture, or composition of matter that would, absent such license, infringe any claim of such patent(s)/application(s):

[list patents/applications];

(b) Nothing in this award shall release Recipient from any obligation of or duty under any other U.S. Government procurement or non-procurement transaction; nor shall it grant to or confer upon Recipient any rights, express or implied, (1) to any invention other than a Subject Invention, (2) under any patent application or patent assigned to the U.S. Government that is dominant over a patent protecting a Subject Invention, (3) under any patent application or patent assigned to the U.S. Government protecting an invention other than a Subject Invention, or (4) under the U.S. patent(s)/patent application(s) identified in 1. above.

(2) No license from the U.S. Government shall be required for research, development, test and evaluation to be performed by Recipient under this award.

(E) The following provision applies to all Recipients.

**“RIGHTS IN MASK WORKS”**

**(1) Definitions:**

(a) “Semiconductor Chip Product” is the final or intermediate form of any product--

(i) having two or more layers of metallic, insulating, or semiconductor material, deposited or otherwise placed on, or etched away or otherwise removed from, a piece of semiconductor material in accordance with a predetermined pattern; and

(ii) intended to perform electronic circuit functions.

(b) “Mask Work” is a series of related images, however fixed or encoded--

(i) having, or representing the predetermined, three-dimensional pattern of metallic, insulating, or semiconductor material present or removed from the layers of a Semiconductor Chip Product; and

(ii) in which series the relation of the images to one another is that each image has the pattern of the surface of one form of the Semiconductor Chip Product.

(c) “Fixed”. A Mask Work is “fixed” in a Semiconductor Chip Product when its embodiment in the Semiconductor Chip Product is sufficiently permanent or stable to permit the Mask Work to be perceived or reproduced from the Semiconductor Chip Product for a period of more than transitory duration.

(2) **License Grant.** For each and every Mask Work generated by Recipient during the performance of work under this Award, Recipient grants to the U.S. Government, a non-exclusive, irrevocable, royalty free, world-wide license to: (1) reproduce the Mask Work by optical, electronic, or any other means; (2) import or distribute a Semiconductor Chip Product in which the Mask Work is embodied; and (3) to induce or knowingly to cause another person, contractor or subcontractor to do any of the acts described in (1) or (2).

(3) **Subawards.** Recipient shall include this clause, suitably modified to replace “Recipient” with “Subrecipient” in all subawards, regardless of tier, in which a Mask Work is likely to be created in the performance of the work under the subaward. Recipient shall not, as part of the consideration for awarding the subaward, obtain rights in the Subrecipient’s Mask Works.

(F) Recipients are responsible for affixing and shall affix appropriate markings indicating the rights of the U.S. Government on all data delivered under the award. The

U.S. Government shall be deemed to have unlimited rights in all data and technical data delivered without markings.

(G) Recipients will include these clauses, suitably modified to identify the parties, in all subawards, regardless of their tier.

## II. COPYRIGHTS, DATA, FOIA AND TITLE TO INTELLECTUAL PROPERTY

(A) All Part 32 Recipients are subject to the following:

### (1) COPYRIGHTS

Recipient may copyright any work that is subject to copyright and was developed, or for which ownership was purchased, under an award. DoD Components reserve a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so.

Recipient may place copyright notices on works developed under this award in the following format: “© YYYY, Recipient”. Recipient may not, however, include any other additional language (such as “All Rights Reserved”, for example) that could cause confusion to future end users as to the scope of the Government’s copyright rights in the Recipient’s work.

Recipient may not incorporate any third party copyrighted works in any works developed under this award that would limit or restrict the Government’s reservation of rights in Recipient’s work as stated above. Additionally, Recipient may not incorporate third party intellectual property in a manner that would create any unintended licensing burden on the Government in any works under this award without the prior written permission of the Grants Officer.

Finally, in the event that any work developed under this award is delivered under a future Government procurement, Recipient acknowledges that the work was developed at least partly at Government expense.

### (2) DATA

The Federal Government has the right to:

(a) Obtain, reproduce, publish or otherwise use the data first produced under an award; and

(b) Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.

Recipient may not place any data markings (such as “Proprietary”, or “Confidential”, for example) of any kind in any work developed under this award, nor may Recipient incorporate any third party materials that have such data markings in any material developed under this award.

### (3) FREEDOM OF INFORMATION ACT

(a) In addition, in response to a Freedom of Information Act (FOIA) request for research data relating to published research findings produced under an award that were used by the Federal Government in developing an agency action that has the force and effect of law, the DoD Component that made the award shall request, and Recipient shall provide, within a reasonable time, the research data so that they can be made available to the public through the procedures established under the FOIA. If the DoD Component that made the award obtains the research data solely in response to a FOIA request, the DoD Component may charge the requester a reasonable fee equaling the full incremental cost of obtaining the research data. This fee should reflect costs incurred by the DoD Component, Recipient, and applicable subrecipients. This fee is in addition to any fees the DoD Component may assess under the FOIA (5 U.S.C. 552(a)(4)(A)).

(b) The following definitions apply for purposes of paragraph (A) of this section:

(i) Research data is defined as the recorded factual material commonly accepted in the scientific community as necessary to validate research findings, but not any of the following: preliminary analyses, drafts of scientific papers, plans for future research, peer reviews, or communications with colleagues. This "recorded" material excludes physical objects (e.g., laboratory samples). Research data also do not include:

(A) Trade secrets, commercial information, materials necessary to be held confidential by a researcher until they are published, or similar information which is protected under law; and

(B) Personnel and medical information and similar information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, such as information that could be used to identify a particular person in a research study.

(ii) Published is defined as either when:

(A) Research findings are published in a peer-reviewed scientific or technical journal; or

(B) A Federal agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law.

(iii) Used by the Federal Government in developing an agency action that has the force and effect of law is defined as when an agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law.

#### (4) TITLE

Title to intangible property and debt instruments acquired under an award or subaward (rather than developed or produced under the award or subaward) vests upon acquisition in Recipient. Recipient shall use that property for the originally-authorized purpose, and Recipient shall not encumber the property without approval of the DoD Component that made the award. When no longer needed for the originally authorized purpose, disposition of the intangible property shall occur in accordance with the provisions of 32 CFR §32.34(g).

(B) All Part 34 Recipients are subject to the following:

#### (1) COPYRIGHT

Recipient may copyright any work that is subject to copyright and was developed under an award. DoD Components reserve a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so.

Recipient may place copyright notices on works developed under this award in the following format: “© YYYY, Recipient”. Recipient may not, however, include any other additional language (such as “All Rights Reserved”, for example) that could cause confusion to future end users as to the scope of the Government’s copyright rights in the Recipient’s work.

Recipient may not incorporate any third party copyrighted works in any works developed under this award that would limit or restrict the Government’s reservation of rights in Recipient’s work as stated above. Additionally, Recipient may not incorporate third party intellectual property in a manner that would create any unintended licensing burden on the Government in any works under this award without the prior written permission of the Grants Officer.

Finally, in the event that any work developed under this award is delivered under a future Government procurement, Recipient acknowledges that the work was developed at least partly at Government expense.

## (2) DATA

Unless waived by the DoD Component making the award, the Federal Government has the right to:

(a) Obtain, reproduce, publish or otherwise use for Federal Government purposes the data first produced under an award.

(b) Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.

Recipient may not place any data markings (such as “Proprietary”, or “Confidential”, for example) of any kind in any work developed under this award, nor may Recipient incorporate any third party materials that have such data markings in any material developed under this award.

## (C) FLOW-DOWN

Recipients will include these clauses, suitably modified to identify the parties, in all subawards, regardless of their tier.

## **Appendix B**

### **Contract Provisions**

All contracts awarded by a recipient, including those for amounts less than the simplified acquisition threshold, shall contain the provisions described in paragraphs 1 through 8 in Appendix A of part 32 of the DoDGARs, as applicable, with the following clarifications:

A.1. Equal Employment Opportunity. The text of Executive Order 11246 may be found at 3 CFR, 1964-1965 Comp., p. 339, and that of Executive Order 11375 may be found at 3 CFR, 1966-1970 Comp., p. 684.

A.2. Debarment and Suspension (E.O.s 12549 and 12689). Paragraph 8 of the Appendix in part 32 of the DoDGARs applies to contract awards that exceed the simplified acquisition threshold and certain other contract awards described in the DoD Component's codification of the Governmentwide rule implementing Executive Order 12549 (3 CFR, 1986 Comp., p. 189) and Executive Order 12689 (3 CFR 1989 Comp., p. 235).